Calendar No. 856

97TH CONGRESS 2d Session } SENATE { REPORT No. 97-586

SALE OF GOVERNMENT-FURNISHED EQUIPMENT

SEPTEMBER 24 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany H.R. 6758]

The Committee on Foreign Relations, to which was referred the bill (H.R. 6758) a bill to authorize the sale of defense articles, defense services and unclassified defense service publications to United States companies for incorporation into end items to be sold to friendly countries, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The purpose of this bill is to authorize the United States government to sell government furnished equipment (produced in United States government arsenals) to U.S. contractors for subsequent incorporation into end items for commercial export to friendly foreign countries.

COMMITTEE ACTION

H.R. 6758, to amend the Arms Control Act to authorize the sale of defense articles to United States companies for incorporation into end items to be sold to friendly foreign countries, was received by the Senate on July 21, 1982 and referred to the Committee on Foreign Relations.

The Foreign Relations Committee held a public hearing on similar legislative language originally contained in S. 2227, to amend the Foreign Relations Assistance Act of 1961 and the Arms Export Control Act, on April 14, 1982. During this hearing the Committee received testimony from executive branch officials.

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On May 26, 1982 the Committee met for the purpose of marking up S. 2227. At that time, an executive branch request for authority to sell defense articles to United States companies for incorporation into end items to be sold to friendly foreign countries was set aside at Senator Glenn's request (by voice vote) pending a Government Accounting Office (GAO) review to consider the implications of the proposed legislative language.

Subsequently, the House of Representatives approved H.R. 6758 which contained legislative language similar to that deleted by the Committee from S. 2227.

The Committee received GAO Report B–208689 (Proposed Arms Sales Legislation) should be subject to Arms Export Control Act on September 7, 1982.

On September 15, 1982, Senator Heinz introduced S. 2920, a bill that incorporated all the changes suggested by the GAO concerning H.R. 6758, and it was referred to the Committee on Foreign Relations.

On September 21, 1982, the Committee met for the purpose of marking up H.R. 6758 and S. 2920.

By voice vote an amendment to substitute the entire text of S. 2920 for the text of H.R. 6758, was unanimously adopted.

Also by a voice vote on September 21, the Committee ordered reported favorably H.R. 6758 as amended.

Committee Comments

On September 2, 1982 the General Accounting Office sent a letter in response to a request by Senator John Glenn which contains an assessment of H.R. 6758 as passed by the House of Representatives. The GAO report concluded that:

> In our opinion, the protective provisions contained in the AECA should apply to contracts involving Government-furnished equipment sold to U.S. contractors for eventual export. If the proposed legislation is incorporated into the AECA, the Congress would be assured that the same reporting and implementation controls created for FMS would apply to Government sales to U.S. contractors for export. Approval of a free-standing bill related to arms exports creates a poor precedent and diminishes the effectiveness of AECA controls over military equipment sales.
>
> For the purpose of this legislation, defense services should be restricted to installing Government-furnished equipment into contractor end items. Although there may be advantages to the U.S. Government in expanding the types of services it provides to a U.S. contractor, the agencies responsible for controlling military exports have not had an opportunity to analyze the implications of this change.

The modifications suggested by the GAO were included in a bill (S. 2920) introduced by Senator Heinz and cosponsored by Senators Jepsen, Percy, Specter and Glenn. The Foreign Relations Committee concurred in these recommended modifications to H.R. 6758 and substituted the text of S. 2920 completely for that of H.R. 6758.

Significant modification included in the Committee bill are:

The measure amends the Arms Export Control Act and thus retains for this authorization all the controls and limitations contained in that Act.

The President rather than the Secretary of Defense is authorized to implement the provision of the bill, and

The authorization with regard to the sale of defense services under this new chapter is strictly limited to services performed in the United States.

The Committee intends that the authority to sell defense articles and defense services under this bill be limited to those that are in fact being provided by the United States Government to the prospective United States private purchaser or its U.S. competitor in connection with United States Government procurements of similar end items for the use of the Department of Defense. The only defense services that may be sold under this authority are those directly associated with the installation, testing, and certification of the Government-furnished equipment.

Congressional Budget Office Cost Estimate

September 24, 1982.

Hon. Charles H. Percy,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6758, an act to authorize the sale of defense articles to United States companies for incorporation into end items to be sold to friendly foreign countries, as ordered prepared by the Senate Committee on Foreign Relations on September 23, 1982.

This legislation amends the Arms Export Control Act to permit the sale on a cash basis of government supplied defense articles or services to any U.S. company for incorporation into end items for commercial sales under section 38 of the Act. The proceeds of such sales are to be credited to the applicable account of the selling agency. This legislation may permit some sales of military articles and services now processsed through the Foreign Military Sales Trust Fund to be concluded on a commercial basis. Except for this effect, it is expected that no significant additional costs to the government will be incurred as a result of enactment of this legislation.

Sincerely,

Raymond C. Scheppach
(For Alice M. Rivlin, Director).

Regulatory Impact Statement

In accordance with Rule XXIX of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of this bill and finds that its enactment would have no regulatory impact. The bill modifies provisions of the Arms Export Control Act of 1976.

CHANGES IN EXISTING LAWS

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

The Arms Export Control Act

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Chapter 2.—FOREIGN MILITARY SALES AUTHORIZATIONS

Sec. 21. Sales From Stocks.—(a) * * *

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(i)(1) Sales of defense articles and defense services which could have significant adverse effect on the combat readiness of the Armed Forces of the United States shall be kept to an absolute minimum. The President shall transmit to the Speaker of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate on the same day a written statement giving a complete explanation with respect to any proposal to sell, under this section[,] *or under authority of Chapter 2B*, any defense articles or defense services if such sale could have a significant adverse effect on the combat readiness of the Armed Forces of the United States. Each such statement shall be unclassified except to the extent that public disclosure of any item of information contained therein would be clearly detrimental to the security of the United States. Any necessarily classified information shall be confined to a supplemental report. Each such statement shall include an explanation relating to only one such proposal to sell and shall set forth—

(A) the country or international organization to which the sale is proposed to be made;

(B) the amount of the proposed sale;

(C) a description of the defense article or service proposed to be sold;

(D) a full description of the impact which the proposed sale will have on the Armed Forces of the United States and

(E) a justification for such proposed sale, including a certification that such sale is important to the security of the United States.

A certification described in subparagraph (E) shall take effect on the date on which such certification is transmitted and shall remain in effect for not to exceed one year.

(2) No delivery may be made under any sale which is required to be reported under paragraph (1) of this subsection unless the certification required to be transmitted by paragraph (E) of paragraph (1) is in effect.

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Chapter 2B.—SALES TO UNITED STATES COMPANIES FOR INCORPORATION INTO END ITEMS

Sec. 30. General Authority.—*(a) subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under cash terms (1) sell defense articles at not less than their estimated replacement cost (or actual cost in the case of services), or (2) procure or manufacture and sell defense articles at not less than their contract or manufacturing cost to the United States Government, to any United States company for incorporation into end items (and for concurrent or follow-on support) to be sold by such a company on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 38 of this Act. The President may also sell defense services in support of such sales of defense articles, subject to the requirements of this chapter, provided, however, that such services may be performed only in the United States. The amount of reimbursement received from such sales shall be credited to the current applicable appropriation, fund or account of the selling agency of the United States Government.*

(b) Defense articles and defense services may be sold, procured and sold, or manufactured and sold, pursuant to subsection (a) of this section only if (1) the end item to which the articles apply is to be procured for the armed forces of a friendly country or international organization, (2) the articles would be supplied to the prime contractor as government-furnished equipment or materials if the end item were being procured for the use of the United States Armed Forces, and (3) the articles and services are available to the prime contractor directly from United States commercial sources at such times as may be required to meet the prime contractor's delivery schedule.

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Chapter 4.—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

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Sec. 42. General Provisions.—(a) * * *

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(d) (1) With respect to sales and guaranties under sections 21, 22, 23, 24, [and 29] *29 and 30* the Secretary of Defense shall, under the direction of the President, have primary responsibility for—

(A) the determination of military end-item requirements;

(B) the procurement of military equipment in a manner which permits its integration with service programs;

(C) the supervision of the training of foreign military personnel;

(D) the movement and delivery of military end-items; and

(E) within the Department of Defense, the performance of any other functions with respect to sales and guaranties.

(2) The establishment of priorities in the procurement, delivery, and allocation of military equipment shall, under the direction of the President, be determined by the Secretary of Defense.

(e)(1) Each contract for sale entered into under sections 21, 22, [and 29,] *29 and 30* of this Act shall provide that such contract may be canceled in whole or in part, or its execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

(2)(A) Each export license issued under section 38 of this Act shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable.

(B) Nothing in this paragraph may be construed as limiting the regulatory authority of the President under this Act.

(3) There are authorized to be appropriated from time to time such sums as may be necessary (A) to refund moneys received from purchasers under the contracts of sale entered into under sections 21, 22, [and 29] *29 and 30* of this Act that are canceled or suspended under this subsection to the extent such moneys have previously been disbursed to private contractors and United States Government agencies for work in progress, and (B) to pay such damages and costs that accrue from the corresponding cancellation or suspension of the existing procurement contracts or United States Government agency work orders involved.

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